

LEGAL NOTICE NO. 37**THE PUBLIC SERVICE COMMISSION ACT, 2017***(No. 10 of 2017)***THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS
AND PUBLIC UNIVERSITIES) (DISCIPLINARY APPEALS
PROCEDURES) REGULATIONS, 2023****ARRANGEMENT OF REGULATIONS***Regulation*

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THE PUBLIC SERVICE COMMISSION ACT, 2017

(No. 10 of 2017)

IN EXERCISE of the powers conferred by section 92 of the Public Service Commission Act, 2017, the Public Service Commission makes the following Regulations—

THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC UNIVERSITIES) (DISCIPLINARY APPEALS PROCEDURES) REGULATIONS, 2023

PART I—PRELIMINARY

1. These Regulations may be cited as the Public Service Commission (State Corporations and Public Universities) (Disciplinary Appeals Procedures) Regulations, 2023. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“appeal” means a request for the re-examination of a decision of a state corporation or public university;

“appellant” means a person who has appealed to the Commission against a disciplinary decision of a state corporation or public university;

“applicant” means a person who has applied to the Commission for a review of a direction or order of the Commission;

“application” means a written representation to the Commission seeking directions or orders during the pendency of an appeal;

“application for review” means a request to the Commission to reconsider its decision in respect of an appeal;

“close of pleadings” means the end of the period granted in the Regulations for the filing and serving of the last set of documents in an appeal, an application, application for review or preliminary objection;

“disciplinary control” means the due process in handling of disciplinary matters;

“person” includes a company, association or body of persons, whether incorporated or unincorporated;

“pleadings” means documents filed by a party to an appeal;

“public university” means a State-owned university to which a Charter has been granted under the Universities Act and includes a constituent college of a public university;

“respondent” means a person against whom an appeal or application has been filed with the Commission; and

“state corporation” has the same meaning assigned to it in section 2 of the State Corporations Act. Cap. 446.

3. The purpose of these Regulations is to provide for the hearing of appeals by the Commission in respect of disciplinary control decisions of state corporations or public universities under section 74 and 75 of the Act. Purpose.

4. These Regulations shall apply to any person who appeals against the disciplinary control decision of a state corporation or public university. Scope.

5. In the hearing and determination of appeals under these Regulations, the Commission shall be guided by the following principles— Guiding principles.

- (a) the promotion of the purposes of the Constitution;
- (b) the promotion of the national values and principles of governance set out in Article 10 of the Constitution;
- (c) the promotion of the values and principles of the public service set out in Article 232 of the Constitution;
- (d) adherence to Article 47 of the Constitution;
- (e) adherence to the provisions of the Fair Administrative Action Act, 2015; No. 4 of 2015.
- (f) the rules of natural justice;
- (g) the application of substantive justice that does not rely on undue regard to technicalities of procedure; and
- (h) timely disposal of appeals.

6. The Commission may, on its own motion or on the application of any party, make such orders as may be necessary for the— Inherent powers of the Commission.

- (a) fair and expeditious disposal of an appeal or application;
- (b) just conclusion of an appeal or application; or
- (c) prevention of the abuse of the processes of the Commission.

7. (1) The Commission may, on its own motion or on the application of a party, refer an appeal to mediation, conciliation or negotiation. Conciliation, mediation and negotiation.

(2) An appeal that has been referred to conciliation, mediation or negotiation under subregulation (1) shall be concluded within sixty days after the referral by the Commission.

(3) Where conciliation, mediation or negotiation fails, the Commission shall hear and determine the appeal in accordance with these Regulations.

PART II—APPEALS

8. (1) A person who is dissatisfied with the disciplinary control decision of a state corporation or public university may appeal to the Commission against that decision. Appeals.

(2) A person who wishes to appeal against the disciplinary control decision of a state corporation or public university shall only do so after exhausting the internal processes of the state corporation or public university.

9. (1) A person who wishes to file an appeal against the disciplinary control decision of a state corporation or public university shall file the appeal within ninety days after the making of the decision by the state corporation or public university.

Filing of appeals.

(2) Despite subregulation (1), the Commission may, on the written request of a party, allow a person to file an appeal out of time if the Commission determines that the circumstances warrant it.

(3) An appeal shall be in Form A as set out in the Schedule and shall specify—

- (a) the name and date of birth of the appellant;
- (b) the name of the respondent;
- (c) the appellant's personal number;
- (d) the appellant's designation;
- (e) the appellant's terms of service;
- (f) the appellant's job group;
- (g) a declaration whether or not there are or have been proceedings or decisions before any court or tribunal in respect of the subject matter of the appeal;
- (h) the grounds of the appeal;
- (i) the facts in support of the appeal;
- (j) the documents in support of the appeal;
- (k) the prayers sought by the appellant; and
- (l) the contact details of the appellant including postal address, email address and telephone number.

(4) An appeal may be filed by an employee of a state corporation or public university in person or through a representative, and where it is filed by a representative, that representative shall, in addition to the requirements of subregulation (3), provide a description of the employee of the state corporation or public university, and the representative's postal address, email address and telephone number.

10. (1) An appellant shall serve the appeal on the respondent after filing the appeal with the Commission.

Service of the appeal.

(2) The appellant shall, within seven days after serving the appeal on the respondent, file an affidavit of service with the Commission stating the date, time, mode and place of service.

(3) The respondent shall, within twenty-one days after being served with the appeal—

- (a) file a response to the appeal with the Commission by way of a replying affidavit or grounds of objection; and
- (b) attach to the replying affidavit or grounds of objection any relevant records or documents, including proceedings, relating to the appeal.

(4) The respondent shall, within seven days after filing the response with the Commission, serve the response on the appellant.

(5) The appellant may, where necessary, file a rejoinder within seven days after being served with the response by the respondent.

(6) The respondent shall, within seven days after serving the response on the appellant, file an affidavit of service with the Commission stating the date, time, mode and place of service.

PART III—PRELIMINARY PROCEEDINGS, INTERIM APPLICATIONS AND PRELIMINARY OBJECTIONS

11. The Commission shall, within twenty-one days after the respondent has filed a response to an appeal under subregulation 10(3)—

- (a) where a party to the appeal has not provided sufficient information, require that party to provide additional information or documents in respect to the appeal;
- (b) where the Commission determines that it is necessary to conduct an investigation, investigate the matters relating to the appeal; or
- (c) where the Commission determines that it is necessary to hold a hearing regarding the appeal, set down the appeal for hearing.

Preliminary proceedings.

12. (1) A party to an appeal may, at any time before the appeal has been heard and determined, apply in writing to the Commission for directions or order in respect to the appeal.

Interim applications.

(2) An application under subregulation (1) shall be served on the other party within seven days after the application has been filed with the Commission.

(3) Within seven days after being served with an application under subregulation (2), the other party shall file a replying affidavit or grounds of objection with the Commission and serve on the party that served it with the application.

(4) Where necessary and save as directed by the Commission, each party shall make written submissions in respect of an application under this regulation and the provisions of regulation 17(5) shall apply.

(5) The Commission shall consider and determine an application under this regulation—

- (a) within thirty days after the filing of the replying affidavit or grounds of objection under subregulation (3); or
- (b) where the Commission has directed the parties to file written submissions, within thirty days after the filing of the written submissions under subregulation (4).

13. (1) A party to an appeal may raise an objection to the appeal on a point of law at any time before the appeal is finally heard and determined by the Commission.

Preliminary objections.

(2) An objection under subregulation (1) shall—

- (a) be in writing;
- (b) state the point of law and grounds for the objection; and
- (c) be served on the other party within seven days after the objection is filed with the Commission.

(3) The party that has been served with a preliminary objection under subregulation (2)(c) shall, within seven days after being served, file with the Commission a written response.

(4) Where necessary and save as directed by the Commission, each party shall make written submissions in respect of preliminary objection under this regulation and the provisions of regulation 17(5) shall apply.

(5) The Commission shall consider and determine a preliminary objection—

- (a) within thirty days after the filing of the written response under subregulation (3); or
- (b) where the Commission has directed the parties to file written submissions, within thirty days after the filing of the written submissions under subregulation (4).

PART IV—WITHDRAWAL OF APPEALS OR APPLICATIONS, CONSOLIDATION OF APPEALS, AND TEST CASES

14. (1) An appellant or applicant may, by written notice to the Commission and at any time before the determination of an appeal, application or preliminary objection, withdraw the appeal, application or preliminary objection.

Withdrawal of appeals, applications or preliminary objections.

(2) The Commission shall, upon receipt of an application to withdraw, mark the appeal or application as withdrawn.

Consolidation of appeals.

15. The Commission may, on its own motion or on the application of a party, consolidate two or more appeals on such terms as may be just in the circumstances.

Test appeals.

16. (1) Where two or more persons have filed appeals against the same respondent, the Commission may, on its own motion or on the application of any of the parties, with written notice to the other party or parties, where the Commission is satisfied that the issues to be determined in the appeals are similar, direct that one of the appeals shall be heard and determined as a test appeal, and proceedings in respect of the other appeal or appeals shall be stayed until the test appeal is heard and finally determined.

(2) The decision of the Commission in respect to a test appeal under subregulation (1) shall apply to the other appeal or appeals.

PART V—HEARINGS

17. (1) The Commission may, pursuant to section 12 of the Act, establish a committee to hold a hearing on an appeal or application and the recommendations of the committee arising from the hearing

Hearings.

shall be submitted to the Commission for consideration and determination.

(2) The Commission may—

- (a) hold a hearing before determining an appeal; or
- (b) receive and consider written submissions from parties to an appeal before determining an appeal.

(3) Where the Commission holds a hearing, it shall notify the parties to the appeal in writing of the date, time and venue of the hearing in Form B as set out in the Schedule.

(4) The notice under subregulation (3) shall be served on the parties to the appeal at least seven days before the date of the hearing.

(5) Where the Commission requires written submissions, it shall require the parties to the appeal to file the submissions as follows—

- (a) subject to the directions of the Commission, the appellant shall first file the submissions with the Commission and thereafter serve them on the other parties within fourteen days after filing; and
- (b) within fourteen days after being served by the appellant under paragraph (a) or upon expiry of the time granted to the appellant, the other party shall file written submissions with the Commission and thereafter serve them on the appellant.

(6) The appellant may file supplementary submissions within seven days after being served with written submissions by the other party under subregulation (5)(b).

18. Where a party to an appeal is a person with disability and requires special arrangements in order to participate effectively at a hearing, that party shall notify the Commission in writing of that party's requirements at least three days before the date of the hearing.

Special arrangements for parties with special needs.

19. Where, after being notified of the hearing under regulation 17(3), a party fails to attend the hearing, the Commission may—

Absence of parties.

- (a) adjourn the hearing to another date, which date shall be notified to the parties in accordance with regulation 17(3); or
- (b) if the circumstances of the case warrant it, conduct the hearing in the absence of the party.

20. (1) The Commission shall, within sixty days after the date of a hearing in respect of an appeal or after receiving the written submissions of the parties under regulation 17(5), determine the appeal.

Determination of appeals.

(2) Where the Commission fails to determine the appeal within the period specified in subregulation (1), the Commission shall notify in writing the parties to the appeal of the reasons for the delay.

(3) The Commission may determine the appeal in any of the following ways—

- (a) uphold the decision being appealed against;
- (b) set aside the decision being appealed against;
- (c) vary the decision being appealed against;
- (d) give such directions as the Commission may consider appropriate with respect to its determination;
- (e) direct the state corporation or public university to refund or reinstate the remuneration owed to the appellant;
- (f) direct the release of any payments that may be due to the appellant from the state corporation or public university;
- (g) recommend to the state corporation or public university that disciplinary action be taken against any officer or employee of the state corporation or public university who may have failed to discharge his or her duty in relation to the disciplinary action being appealed against and, as a consequence, the state corporation or public university suffered a loss; or
- (h) give such other directions or orders as may be appropriate in the circumstances.

21. (1) A person who is dissatisfied with the determination of the Commission in respect of an appeal may, within six months after the date of the determination of the appeal by the Commission, apply to the Commission in writing for a review of the determination.

Review of the determination of an appeal.

(2) The Commission may admit an application under subregulation (1) if—

- (a) new material facts have arisen which, with due diligence, could not be presented when the determination of the Commission was initially made; or
- (b) there was an error apparent on the record of the determination of the Commission.

(3) An application for review under this regulation shall be in Form C as set out in the Schedule.

(4) The Commission may, on the written application of a person who is dissatisfied with the determination of the appeal, allow an application under subregulation (1) to be filed out of time if the circumstances warrant it.

(5) A person who applies for the review of the determination of the Commission under subregulation (1) shall serve the respondent with the application within seven days after filing the application.

(6) Within seven days after being served with the application under subregulation (5), the respondent shall file with the Commission and serve the applicant with a response to the application.

(7) The Commission may, by notice in writing, where it considers it necessary, require the parties to file written submissions in respect of an application under subregulation (1).

(8) The Commission may determine an application under subregulation (1) in any of the following ways—

- (a) uphold the determination in respect of which the application for review was made;
- (b) set aside the determination in respect of which the application for review was made;
- (c) vary the determination in respect of which the application for review was made;
- (d) direct the state corporation or public university to refund or reinstate the remuneration owed to the appellant;
- (e) recommend to the state corporation or public university that disciplinary action be taken against any officer or employee of the state corporation or public university who may have failed to discharge his or her duty in relation to the disciplinary action being appealed against and, as a consequence, the state corporation or public university suffered a loss; or
- (f) give such directions in respect of which the application for review was made as may be appropriate in the circumstances.

(9) The Commission shall determine an application for review within sixty days after the hearing of the application or filing of written submissions.

(10) Where the Commission fails to determine the application for review within the period specified in subregulation (1), the Commission shall notify in writing the parties to the application of the reasons for the delay.

22. The Commission shall communicate in writing its determinations in respect of appeals and applications for review within seven days after making the determinations.

Commission to communicate its determinations.

23. (1) Any person who is affected by the decision of the Commission may, where a party to the appeal fails to implement the decision of the Commission, apply to the Employment and Labour Relations Court for the enforcement of the decision of the Commission in accordance with Article 162(2)(a) of the Constitution.

Enforcement of decisions of the Commission.

(2) Any party to an application for review who is dissatisfied with the decision of the Commission in respect of the application may apply to the Employment and Labour Relations Court for judicial review of the decision in accordance with Article 162(2)(a) of the Constitution.

PART VI—MISCELLANEOUS PROVISIONS

24. (1) A party to an appeal shall file with the Commission the party's pleadings by—

Pleadings.

- (a) delivering three copies of the pleadings to the Commission; and
- (b) delivering electronically a copy of the pleadings through the Commission's official email address.

(2) A party that files pleadings with the Commission shall, subject to any directions or orders of the Commission, file the pleadings within the period prescribed under these Regulations.

25. (1) Pleadings or notices under these Regulations may be served through any of the following methods—

- (a) hand delivery to the party;
- (b) sending to the last known address of the party by registered post or courier service;
- (c) email to the last known email address of the party;
- (d) subject to the approval of the Commission on written application, advertisement in a newspaper with a nationwide circulation; or
- (e) subject to the approval of the Commission on written application, short message service or mobile application service.

(2) Pleadings or notices shall be deemed to have been served or delivered on the date they are received or stamped by the Commission or party, as the case may be.

(3) Where pleadings or notices are delivered—

- (a) by hand, the pleadings or notices shall be deemed to have been duly served or received if the recipient acknowledges by signing, dating and, where applicable, stamping;
- (b) by registered post, the pleadings and notices shall be deemed to have received on the seventh day after they were dispatched;
- (c) by courier, the pleadings and notices shall be deemed to have received on the second day after they were dispatched; and
- (d) by email, the pleadings and notices shall be deemed to have received on the twenty-fourth hour after they were dispatched.

(4) The person serving or sending pleadings or notices shall file an affidavit of service and proof of service or dispatch in the prescribed methods within seven days after service or dispatch.

(5) The affidavit of service under subregulation (4) shall be in Form D as set out in the Schedule.

26. Nothing in these Regulations shall affect the powers of the Commission, if the circumstances so require or in the interests of justice, to—

Powers of the Commission in relation to service.

- (a) authorise the service of pleadings in any other method that is not expressly provided in these Regulations; or
- (b) find that pleadings or notices that have been served or dispatched in a method that is not provided in these Regulations have been properly served or dispatched.

27. A party to an appeal shall have the right to—

Rights of parties to an appeal.

- (a) be heard in person;
- (b) be represented by an advocate of the party's choice:

Provided that where a party is represented by an advocate, that party shall bear the costs of the representation;

- (c) be accompanied by a representative including a representative of the relevant trade union or any other person of the party's choice;
- (d) if the party does not understand the language used in the proceedings of the Commission, an interpreter; and
- (e) access the information held by the Commission, state corporation or public university that may be relevant to the determination of the appeal.

28. (1) The Commission shall keep and maintain an accurate and complete record of the proceedings relating to an appeal.

Record of proceedings.

(2) The Commission shall, on the written application of a party to an appeal and on sufficient notice, provide that party with a copy of the record of the proceedings relating to the appeal.

SCHEDULE
[r. 9(3), 17(3), 21(3) and (24(5)]
PUBLIC SERVICE COMMISSION
THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC
UNIVERSITIES) (DISCIPLINARY APPEALS PROCEDURES)
REGULATIONS, 2023

FORM A

[r.9(3)]

State Corporation/Public University Appeal No. of 20.....

Between

..... APPELLANT

..... RESPONDENT

APPEAL

The Secretary/Chief Executive Officer
Public Service Commission
Commission House
P.O. Box 30095-00100
NAIROBI
The humble appeal of

(Name of appellant)

of P.O. Box in the Republic of Kenya

(Insert address)

is as follows:

- (a) Name of appellant:
- (b) Job description:
- (c) Personal number:
- (d) Job group:
- (e) Date of birth:
- (f) Designation:
- (g) Terms of service:
- (h) Name of respondent:
- (i) Facts giving rise to the appeal:

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.....
.....

(j) Grounds in support of the appeal:

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.....
.....

(k) Documents to be relied upon in support of the appeal:

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.....
.....

(l) Declaration as to whether there are or have been any proceedings or decision by or before any court or tribunal on the same subject matter:

.....
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.....
.....

(m) Reliefs sought:

.....
.....
.....
.....

Dated at this day of 20.....

Signed

(Appellant/advocate for the appellant)

Drawn and filed by:

Name:

Address:

Email address:

Telephone number:

To be served upon:

Name:

Address:

Email address:

Telephone number:

PUBLIC SERVICE COMMISSION

THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC
UNIVERSITIES) (DISCIPLINARY APPEALS PROCEDURES)
REGULATIONS, 2023

FORM B

[r.17(3)]

State Corporation/Public University Appeal No. of 20.....

Between

..... APPELLANT

..... RESPONDENT

HEARING NOTICE

TAKE NOTICE THAT your appeal will be heard on the day of 20.....
at o'clock in the noon.

The hearing shall be held at:

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.....
.....
.....

TAKE NOTICE THAT should you, or someone duly authorised by law on your behalf, fail to appear at the time and place specified in this Notice, the Commission may proceed to hear the appeal and make such determination as it shall deem fit and just, your absence notwithstanding.

Signed:
For the Commission

PUBLIC SERVICE COMMISSION

THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC
UNIVERSITIES) (DISCIPLINARY APPEALS PROCEDURES)
REGULATIONS, 2023

FORM C

[r.21(3)]

State Corporation/Public University Appeal No. of 20.....

Between

..... APPELLANT

..... RESPONDENT

APPLICATION FOR REVIEW*(of the Commission's decision dated the.....)*

The Secretary/Chief Executive Officer

Public Service Commission

Commission House

P.O. Box 30095-00100

NAIROBI

The humble application of

(Name of applicant)

of P.O. Box in the Republic of Kenya

(Insert address)

is as follows:

(a) Facts giving rise to the application:

.....
.....
.....
.....

(b) State the new material facts arising or the error apparent on the face of the decision that is sought to be reviewed:

.....
.....
.....
.....

(c) Grounds in support of the application (*explain the new material facts or the error apparent on the face of the decision that is sought to be reviewed*):

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.....

(d) Documents to be relied upon in support of the application:

.....
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.....
.....

(e) Declaration as to whether there are or there have been any proceedings or decision by or before any court or tribunal on the same subject matter:

.....
.....
.....
.....

(f) Reliefs sought:

.....
.....
.....
.....

Dated at this day of 20.....

Signed

(Appellant/advocate for the applicant)

Drawn and filed by:

Name:

Address:

Email address:

Telephone number:

To be served upon:

Name:

Address:

Email address:

Telephone number:

PUBLIC SERVICE COMMISSION

THE PUBLIC SERVICE COMMISSION (STATE CORPORATIONS AND PUBLIC
UNIVERSITIES) (DISCIPLINARY APPEALS PROCEDURES)
REGULATIONS, 2023

FORM D

[r.24(5)]

State Corporation/Public University Appeal No. of 20.....

Between

..... APPELLANT

..... RESPONDENT

AFFIDAVIT OF SERVICE

I of P.O. Box in the Republic of Kenya do make oath and state as follows:

1. THAT I am the appellant/applicant/respondent/authorised process server of the High Court of Kenya.
2. THAT on the day of..... 20....., I filed a copy of (indicate the document) at the Public Service Commission.
3. THAT on the day of..... 20....., I proceeded to the..... where I met with the (person being served).
4. THAT I tendered a copy of the aforementioned document and the same was acknowledged by stamping and signing or signing of my copy. Annexed hereto is a copy of the stamped/signed page of the served document.
5. THAT I now return a duly served and signed copies of the said document.
6. THAT what is stated herein is true to the best of my knowledge, information and belief.

SWORN at this day of 20.....
By the said:)

)

)

)) *Deponent*

)

Before me:)
)

COMMISSIONER OF OATHS)

Drawn and filed by:

Name:

Address:

Email address:

Telephone number:

To be served upon:

Name:

Address:

Email address:

Telephone number:

Made on the 29th November, 2023.

ANTHONY M. MUCHIRI,
Chairperson of the Public Service Commission.